

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the matter of)
) CC Docket No. 96-45
 Federal-State Joint Board)
 on Universal Service)
 To: The Commission

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

**PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION
 OF THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION**

The Iowa Telecommunications and Technology Commission, which operates the Communications Network (collectively, the "ICN"), by its attorneys, hereby submits this, its petition for clarification and partial reconsideration of the Commission's *Report and Order* in the above-referenced proceeding.^{1/} As described below, ICN seeks clarification and reconsideration as to only a limited set of issues. Nevertheless, Commission action on these matters is important to ensuring that eligible schools and libraries in Iowa can obtain the benefits the Commission intended for them to receive.

In particular, ICN seeks to confirm that the services it provides to Iowa schools and libraries will be eligible for universal service support and that the State of Iowa's longstanding commitment to support advanced services will not adversely affect the funding available to schools and libraries in Iowa. ICN also seeks reconsideration of the *First Report and Order* to the extent that it requires non-profit entities, such as ICN, to make universal service contributions.

^{1/} Federal-State Joint Board on Universal Service, *Report and Order*, CC Dkt. No. 96-45, FCC No. 97-157, rel. May 8, 1997 (the "*Report and Order*").

I. Introduction

ICN is an agency of the State of Iowa. It was created for the specific purpose of bringing advanced communications infrastructure to schools, libraries and certain other designated entities within Iowa. In the four years since its inception, ICN has constructed a network that reaches each of ninety-nine counties in Iowa and that will provide every school district — both public and private — in the State with high speed telecommunications services within the next few years. ICN also provides Internet service and various telemedicine services. No other state has made such a commitment to making advanced telecommunications services available to the education and health care communities. Simply put, ICN is unique.

ICN integrates services purchased from telecommunications carriers with facilities owned by ICN to provide DS-3 level connections to each school district. Schools use these facilities for distance learning, for Internet access or for any other educational purpose. Because ICN provides these services at cost, the price of this service almost always is less than would be available commercially. In fact, in many parts of Iowa, the services provided by the ICN cannot be obtained from any other source. Because these advanced services might be prohibitively expensive for schools and other eligible entities, even when offered at cost, the State of Iowa provides its own subsidies that significantly lower the out-of-pocket costs for eligible entities.

ICN seeks clarification of the *Report and Order* to ensure that students in Iowa will be able to continue to benefit from the State's farsighted determination to bring advanced

services to schools and libraries and to ensure that the State is not penalized for its willingness to subsidize these advanced services even before the Telecommunications Act of 1996 was enacted. Thus, ICN asks the Commission to confirm that schools and libraries receiving advanced telecommunications services from ICN will be eligible for support from the federal universal service fund to the same extent that they would be if they obtained those services from another provider. ICN also seeks confirmation that federal universal service support will be based on the basic charges for services provided to eligible entities, that is, the charge before any additional state subsidies are included. Finally, ICN seeks reconsideration of the *Report and Order* to the extent that it requires non-profit entities to contribute to universal service funding. Requiring such contributions will not further the purposes of the *Report and Order* or the universal service provisions of the Communications Act.

II. Support Should Be Available for Services Provided Through ICN and Like Entities.

The *Report and Order* is written with the assumption that providers of telecommunications services to eligible schools, libraries and rural health care institutions will be traditional commercial entities, such as local telephone companies, cable operators or Internet service providers. In most cases, that will be true. Indeed, even in Iowa, eligible entities will obtain their local telephone service and many other services from commercial telecommunications carriers. ICN is not a commercial entity, but it may well be the only source for advanced services for many of the eligible entities in Iowa. To ensure that, in

fact, these services remain available, ICN seeks confirmation that eligible entities will be able to obtain support for services provided by ICN.

As described above, ICN combines its facilities with services obtained from commercial telecommunications carriers to provide high-speed connections to eligible entities throughout Iowa. ICN is not a reseller or an aggregator because its own facilities are extensive. In fact, ICN owns the fiber backbone facilities that connect each of the counties in Iowa to central hubs. These facilities allow ICN to offer a wide range of services, including DS-3 transport and Internet access.

Iowa schools, libraries and health care facilities are free to purchase services from ICN or from any other vendor. These entities do not necessarily purchase all of their services from ICN, either because they do not yet want the service or because they obtain it from a different source.^{2/} In other words, ICN's services are not forced onto any of the eligible entities. While ICN does have significant advantages in providing these services to eligible entities, those advantages come from its commitment to providing advanced services throughout Iowa and from its commitment to recover only the cost of those services.

In light of these facts, it is apparent that making support available for services provided by ICN is fully consistent with the intent of Section 254(h) of the Communications Act and of the Commission's Rules implementing that provision. ICN is a provider of advanced telecommunications services to schools and libraries and, most important, is likely to be the most cost-effective provider of those services. Thus, making support available for

^{2/} Internet access, for instance, can be obtained from other vendors.

ICN's services will benefit schools, libraries and rural health care institutions by minimizing their costs and, at the same time, will reduce disbursements from the Universal Service Fund. Moreover, because eligible entities can (and do) purchase services from other providers of telecommunications and information services, allowing support for services provided by ICN merely gives Iowa schools, libraries and rural health care institutions the opportunity to choose how they obtain these services on a level playing field. For these reasons, ICN seeks confirmation that services it provides will be eligible for support.

III. The Commission Should Confirm that State Support Will Not Affect the Level of Federal Support Available to Eligible Entities.

ICN is one element of a strong commitment by the State of Iowa to make advanced services available to eligible entities throughout the state. Another important element of that commitment is the State's subsidy program for those services, which greatly reduces the amount that eligible institutions must pay for those advanced services. The Commission should confirm that Iowa's subsidy program, and any other state subsidy program that may be adopted to supplement federal universal service funding, will not affect the level of federal support that eligible entities receive.

In Iowa, the state provides significant subsidies. For instance, the cost to deliver a DS-3 circuit to a school typically is \$750 per hour. Further, the cost to deliver full motion interactive video services to a school that has a DS-3 circuit in place is \$86 per hour. Iowa now provides subsidies, through appropriations to the State Department of Education, to reduce these charges to levels considered affordable for Iowa schools. Thus, the schools pay considerably less than \$750 per month for circuit delivery or \$86 per hour for video services.

The Iowa subsidies are structured similarly to the federal support program. That is, the initial charge to the school is set based on ICN's costs and then a subsidy is applied. A school's actual subsidy depends on the kinds and amounts of the services it uses. Moreover, the subsidies are allotted on a school-by-school basis, just as in the federal program.

Given the nature and structure of the existing state subsidies, it is apparent that they should not affect the level of federal universal service support available to eligible entities that use ICN's services. Specifically, federal universal service support should be based on the full cost of the services ICN provides, rather than on the post-subsidy cost to the schools. This principle should apply not only to Iowa, but to any State that chooses to provide its own, separate support for services to schools, libraries and rural health care institutions.

Commission confirmation that state subsidies will not affect the level of federal subsidies will have significant beneficial effects. Most important, it will encourage the States to adopt their own subsidy programs, which will further reduce costs to eligible institutions. Even in States with existing subsidy programs, the addition of the federal subsidies will likely result in reduced costs. For instance, in Iowa, the hourly out of pocket cost of DS-3 service to schools will drop as much as 80 percent if schools using ICN's services are permitted to obtain full federal support. In addition, States that have existing subsidy programs, such as Iowa, may be able to redirect some of their funding to costs that the federal program does not support, such as computers, modems and software. As the

Commission has acknowledged, these unsupported facilities are necessary for schools and libraries to obtain access to advanced services.^{3/}

IV. Non-Profit Entities Should Not Be Required to Contribute to the Universal Service Fund.

The *Report and Order* concludes that non-profit entities should be included among the entities required to make contributions to the Universal Service Fund.^{4/} This conclusion is based on the assumption that Congress did not intend to limit contribution obligations to for-profit entities.^{5/} There are, however, significant reasons not to impose contribution obligations on non-profit entities, and especially on entities such as ICN that exist solely to reduce the costs of telecommunications services to eligible entities such as schools and libraries.

First, the Commission has the discretion to determine that non-profit entities are not required to make contributions to the Universal Service Fund. The *Report and Order* does not rely on a definitive Congressional statement regarding payment obligations, but only on an inference based on a lack of specific Congressional guidance.^{6/} Moreover, the Commission is empowered to adopt contribution mechanisms that are “equitable,” a term

^{3/} *Report and Order* at ¶ 572 (requiring demonstration of plans for obtaining non-supported facilities in funding applications).

^{4/} *Id.* at ¶ 784.

^{5/} *Id.*

^{6/} *Id.* (Determining not to “assume” Congressional intent regarding non-profit entities “when Congress could have but did *not*, so state” its intent) (emphasis in original).

that gives it considerable discretion to determine what entities are required to contribute to the fund and the nature of those contributions.^{7/}

The Commission should exercise its discretion to exempt non-profit entities such as ICN from the contribution requirement because there is no public benefit to requiring ICN to make contributions. Assessing universal service contributions on ICN will increase the nominal cost of its services, but that cost will then be recovered not from end users (as would be the case for commercial telecommunications carriers) but from the subsidy funds provided by the State of Iowa and from federal universal service support. In effect, the money would go out of one pocket and into the other, with no net benefit to the Universal Service Fund or to the State of Iowa.

Exempting entities like ICN from universal service contributions also will help ensure that they can meet their obligations to provide the lowest-cost services possible. In the case of ICN, if there are any net costs from universal service contributions, those costs will be borne by the taxpayers of Iowa, in the form of higher costs for ICN services and reduced availability of funds for schools, libraries and rural health care institutions. There is no reason to impose those costs and, consequently, no reason to require ICN to contribute to the federal Universal Service Fund.

^{7/} *See* 47 U.S.C. § 254(d).

V. Conclusion

For all these reasons, the Iowa Communications Network respectfully requests that the Commission clarify and reconsider the *Report and Order* as described herein.

Respectfully submitted,

IOWA TELECOMMUNICATIONS AND
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July 17, 1997

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, do hereby certify that on this 17th day of July, 1997, I caused copies of the foregoing "Petition for Clarification and Partial Reconsideration" to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

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